

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DEFENDANTS' MOTION FOR
EXTENSION OF TIME TO
RESPOND TO PLAINTIFF'S
AMENDED COMPLAINT**

**Note on Motion Calendar:
June 17, 2022**

Responsive to Plaintiff's Opposition (Dkt#46). Defendants state as follows:

1. Contrary to Plaintiff's claim that "Defendants offer no persuasive reason for their failure to either adhere to the Court's deadline or timely seek an extension," Defendants' motion expressly states that Defendants' undersigned counsel had undergone ankle replacement surgery (which took place five days before this Court issued its April 27, 2022 Order (Dkt# 33) partially granting Defendants' Motion to Dismiss and setting further dates). Given that that order set a deadline of May 27, 2022 for Bungie to file an Amended Complaint, with Defendants' response due fourteen days later, Defendants' counsel (who was under the influence of powerful pain killers at the time) mistakenly docketed Defendants' response for June 10, 2022, not realizing Bungie would file its Amended Complaint more than one week earlier.

2. In any event, Defendants have not only timely responded to Bungie's Motion for Preliminary Injunction (Dkt# 39) on June 6, 2022, but, on June 9, 2022 responded to the

1 Amended Complaint with a Motion for Partial Dismissal (Dkt# 40). Accordingly,
 2 Defendants' response to the Amended Complaint is already filed, and the "delay" in getting it
 3 filed is only one week from the response date triggered by Bungie's filing of its Amended
 4 Complaint earlier than expected.

5 3. Importantly, Bungie has not identified any prejudice that it has or might suffer
 6 as a result of the one week delay of Defendants' response to the Amended Complaint.
 7 Bungie's Motion for Preliminary Injunction is not delayed at all and is proceeding on
 8 schedule, while any prejudice or harm that might result from a one-week delay in a case that
 9 has been pending for over one and one-half years is difficult, if not impossible to see. The
 10 parties have timely completed their Rule 26(f) conference and submitted their Joint Report
 11 (Dkt# 41) on the date specified by the Court. Again, there is absolutely no delay in the
 12 progress of this case and any purported "prejudice" to Bungie, other than potentially having to
 13 give up the possibility of getting their opponent over a barrel, has not been identified.

14 4. Finally, if Bungie's opposition to the request for a short extension is to provide
 15 grounds for opposing Defendants' Motion for Partial Dismiss on the basis of untimeliness,
 16 such action is short sighted. Defendants' motion, if granted, will not dispose of the case in its
 17 entirety but, rather, will greatly simplify the case and foster prompt settlement by dismissing
 18 four individual defendants who are not properly before the Court and whose continued
 19 participation will only cause needless expense and complication. That motion should be
 20 decided by the Court with full knowledge and consideration of the facts and law, and should
 21 not be disregarded on the basis of a one week delay from an artificial deadline having no
 22 bearing on the substantive merits of the case.

23 For all the foregoing reasons, this Court should grant the requested extension and
 24 accept Defendants' Motion for partial dismissal as being timely filed.

25 Such action by this Court is respectfully requested.

26 Dated June 17, 2022.

27 /s/ Philip P. Mann

28 Philip P. Mann, WSBA No: 28860

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